



FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

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The Committee solicits comment on the following adopted instructions by July 1, 2016. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

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ADOPTED PENDING PUBLIC COMMENT

Acting under MCR 2.512(D)(1), the Committee adopts amendments to the firearm instructions, M Crim JI 11.3, 11.17, 11.34 and 17.11, and adds new instructions M Crim JI 11.3a and 11.34a to the Weapons instructions in Chapter 11. The instructions are effective May 1, 2016, pending public comment. The new and amended instructions are offered to comport with legislative amendments to MCL 8.3t and 75.222(f) (adding pneumatic guns), 750.226 (carrying with unlawful intent), and 750.227b (felony-firearm), and in response to the Court of Appeals decision in *People v Humphrey* __ Mich App __ (2015), that inoperability of a firearm is not a defense to firearms violations. Deletions are in strikethrough; added language is underlined. This publication supersedes the proposed amendment to M Crim JI 11.3 published in February 2016.

[AMENDED] M Crim JI 11.3 Definition of Pistol

(1) A pistol is a firearm. A firearm includes any weapon ~~from which a dangerous object can be shot or propelled by the use of explosives, gas, or air~~ will, is designed to, or may readily be converted to expel a projectile by action of an explosive. ~~[A firearm does not include smooth bore rifles or handguns designed and manufactured exclusively for shooting BBs no larger than .177 caliber by means of spring, gas, or air.]~~

(2) The shape of the pistol is not important as long as it is twenty-six ~~thirty~~ inches or less in length.

(3) ~~Also, It~~ It does not matter whether or not the pistol was capable of firing a projectile or whether it was loaded.

Use Note

~~Use bracketed material only where there is some question that the weapon in question is a smoothbore rifle or a handgun designed for shooting BBs no larger than .177 caliber.~~

[NEW] M Crim JI 11.3a Definition of Pneumatic Gun

A pneumatic gun means any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air. Pneumatic gun includes a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

[AMENDED] M Crim JI 11.17 Going Armed with Firearm or Dangerous Weapon with Unlawful Intent

(1) The defendant is charged with the crime of going armed with a dangerous weapon with unlawful intent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant went armed with a _____.¹

(3) Second, at that time the defendant intended to use this weapon unlawfully against someone else.²

Use Note

¹ Define term used:

M Crim JI 11.3 Pistol
M Crim JI 11.5 Dirk, Dagger, and Stiletto
M Crim JI 11.18 Knife and Razor
M Crim JI 11.3a Pneumatic Gun
M Crim JI 11.19 Dangerous Weapon

² This is a specific intent crime.

[AMENDED] M Crim JI 11.34 Possession of Firearm at Time of Commission or Attempted Commission of Felony (Felony Firearm)

(1) The defendant is also charged with the separate crime of possessing a firearm at the time [he / she] committed [or attempted to commit]¹ the crime of _____.

(2) To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3) First, that the defendant committed [or attempted to commit] the crime of _____, which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.

(4) Second, that at the time the defendant committed [or attempted to commit] that crime [he / she] knowingly carried or possessed a firearm.

[Use any of the following paragraphs when factually appropriate:]

[(5) This charge includes possession of a firearm during either a completed crime or an attempted crime. An attempt has two elements. First, the defendant must have intended to commit the crime of _____. Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other objective.]²

[(6) It does not matter whether or not the gun was loaded.]

[(7) A firearm includes any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive ~~from which a dangerous object can be shot or propelled by the use of explosives, gas, or air.~~]³

[(8) A pistol is a firearm.]

~~[(9) A firearm does not include smooth bore rifles or handguns designed and manufactured exclusively for shooting BBs not exceeding .177 caliber by means of spring, gas, or air.]~~

Use Note

Note that the statute states “felony” but explicitly excludes the felonies of carrying a concealed weapon, MCL 750.227, and unlawful possession of a pistol by a licensee, MCL 750.227a. Do not use this instruction when these are the felonies charged.

¹ Attempt is part of the statutory definition of this offense, rather than a lesser included offense. When factually appropriate or requested, include attempt language in paragraphs (1), (3), and (4), and give (5) in its entirety.

² Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982), and *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

³ The prosecutor need not prove that the firearm was operable. *People v Peals*, 476 Mich 636, 720 NW2d 196 (2006).

[NEW] M Crim JI 11.34a Using Pneumatic Gun in Furtherance of Commission or Attempted Commission of Felony (Felony Firearm)

(1) The defendant is also charged with the separate crime of using a pneumatic gun while committing [or attempting to commit]¹ the crime of _____.

(2) To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3) First, that the defendant committed [or attempted to commit] the crime of _____, which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.

(4) Second, that at the time the defendant committed [or attempted to commit] that crime [he / she] used a pneumatic gun to further the commission of [or attempt to commit] that crime. A pneumatic gun is any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air [such as a paintball gun that expels by gas or air pressure plastic balls filled with paint for the purpose of marking the point of impact].

[Use any of the following paragraphs when factually appropriate:]

[(5) This charge includes use of a pneumatic gun in furtherance of either a completed crime or an attempted crime. An attempt has two elements. First, the defendant must have intended to commit the crime of _____. Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other objective.]²

[(6) It does not matter whether or not the pneumatic gun was loaded.]

Use Note

Note that the statute states “felony” but explicitly excludes the felonies of selling firearms illegally, MCL 750.223, carrying a concealed weapon, MCL 750.227, unlawful possession of a pistol by a licensee, MCL 750.227a, and illegally altering firearms, MCL 750.230. Do not use this instruction when these are the felonies charged.

¹ Attempt is part of the statutory definition of this offense, rather than a lesser included offense. When factually appropriate or requested, include attempt language in paragraphs (1), (3), and (4), and give (5) in its entirety.

² Any attempt to commit an offense is a specific intent crime. See *People v Langworthy*, 416 Mich 630, 644-645, 331 NW2d 171 (1982), and *People v Joesepe Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (*opinion of Levin, J.*).

[AMENDED] M Crim JI 17.11 Definition of Firearm-Gun, Revolver, Pistol

(1) A gun [revolver / pistol] is a firearm. A firearm includes any weapon ~~from which a dangerous object can be shot or propelled by the use of explosives, gas, or air which is designed to or may readily be converted to expel a projectile by action of an explosive~~ {A firearm does not include smooth bore rifles or handguns designed and manufactured exclusively for shooting BBs no larger than .177 caliber by means of spring, gas, or air.}

[(2) It does not matter whether or not the gun (revolver / pistol) was capable of firing a projectile or whether it was loaded.]

Use Note

~~* Material in brackets is to be given where appropriate.~~